

Calendar No. 757

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-383 }

EXECUTIVE BRANCH FINANCIAL
ACCOUNTABILITY REPORTING ACT OF 2004

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2688

TO PROVIDE FOR A REPORT OF FEDERAL ENTITIES WITHOUT
ANNUALLY AUDITED FINANCIAL STATEMENTS



OCTOBER 4, 2004.—Ordered to be printed

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EXECUTIVE BRANCH FINANCIAL ACCOUNTABILITY REPORTING ACT OF 2004

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Ms. COLLINS, from the Committee on Governmental Affairs,
submitted the following

R E P O R T

[To accompany S. 2688]

The Committee on Governmental Affairs, to whom was referred the bill (S. 2688) to provide for a report of Federal entities without annually audited financial statements, having considered the same reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE & SUMMARY

S. 2688, the Executive Branch Financial Accountability Reporting Act of 2004, is intended to ensure that Congress receives information on the financial management practices of the Executive Branch. The legislation instructs the Director of the Office of Management and Budget (OMB) to list for Congress: (1) each Federal entity that receives an exemption or waiver from the statutory requirement for an annually audited financial statement; and (2) other Federal entities, including special purpose entities, that do not prepare independently audited annual financial statements.

S. 2688 also requires the OMB report to include assessments of: (1) the capability of the listed entities to prepare annual financial statements and have them independently audited; (2) how to re-

duce the costs of preparing the financial statements and performing independent audits by grouping together smaller entities and other methods by which the preparation and independent audits of financial statements could be made cost-effective; and (3) the benefits of improved financial oversight encompassing the entire Executive Branch, including recommendations for a plan to implement a requirement that the entire Executive Branch prepare annual independently audited financial statements.

II. BACKGROUND

Financial statement audit requirements

Congressional efforts to improve financial management and the efficiency of government spending began almost 25 years ago with the enactment of the Federal Managers Financial Integrity Act of 1982, which strengthened internal controls and accounting systems. Since that time, Congress has passed several other financial management reforms, including the Chief Financial Officers Act (CFO) of 1990 and the Accountability of Tax Dollars Act (ATDA) of 2002. Together, these reform initiatives established important financial management positions in Cabinet departments and most major Federal agencies. In addition, the Government Management and Reform Act of 1994 substantially expanded the CFO Act by requiring the 24 CFO Act agencies to produce annually audited financial statements for all their accounts and associated activities.

The CFO Act, among other things, created 24 Chief Financial Officer (CFO) and deputy CFO positions in Cabinet departments¹ and major Executive Branch agencies.

The Accountability of Tax Dollars Act (ATDA) of 2002² amended the CFO Act to extend its requirements regarding the preparation and audit of financial statements to most Executive Branch agencies. According to OMB, the ATDA required an additional 76 agencies to prepare annual financial statements and have them audited. Currently, all Cabinet-level departments and most Executive Branch agencies are required by the ATDA to conduct annual audits of their financial statements.

Provisions of the ATDA permitted the Director of OMB to exempt non-CFO Act entities from this requirement under certain conditions. The ATDA provided the OMB Director with the authority to exempt an agency with budget authority of \$25 million or less if it is determined that an audited financial statement is not warranted “due to the absence of risks associated with the agency’s operations, the agency’s demonstrated performance, or other factors that the Director considers relevant.”³ During the first two years of implementation, the Director could also waive the requirement to prepare an audited financial statement for any non-CFO Act agency.

The ATDA required the OMB Director to notify Congress annually of each agency that has been exempted from its requirements, including the reason for such exemption. For FY 2003, 21 agencies

¹ The Department of Homeland Security (DHS) is currently not subject to the CFO Act. However, Congress currently is considering legislation to apply the CFO Act to DHS. The Federal Emergency Management Agency (FEMA) was one of the original 24 agencies covered, but is no longer since it is now part of the DHS.

² Public Law No. 107-289.

³ Id.

received an exemption due to: the need for additional time to develop sound financial practices; the lack of budgeted funds and a lack of alternative sources; and the need for more time to implement new financial systems.⁴

The reforms made by the CFO Act and the ATDA have improved the oversight and accountability of most Executive Branch departments and agencies. There currently are entities in the Executive Branch, however, that do not prepare financial statements, or if they do, their financial statements are not being audited. Some agencies, for example, have received an exemption from this requirement under provisions of the ATDA. In addition, Executive Branch agencies are increasingly establishing special purpose entities⁵ that are not included in the agencies' budgets and, therefore, are not subject to the scrutiny provided by an annual financial statement audit.

The Committee believes it is imperative that every effort be made to ensure the financial integrity of all Executive Branch departments and agencies. Therefore, S. 2688 would require the Office of Management and Budget (OMB) to conduct a thorough assessment and submit a report to Congress regarding those Federal entities that are not currently required to prepare audited financial statements. The Committee further believes this study is necessary to ensure that OMB and Congress have an accurate and complete picture of the breadth and depth of the gaps in financial accountability within the Executive Branch to determine whether additional legislation is needed to close those gaps.

Lack of financial information regarding all federal entities

ATDA does not require the OMB Director to provide further information regarding the financial management practices of agencies receiving an exemption from the requirement for an annual financial statement audit; nor is the Director required to submit a comprehensive list of all entities in the Executive Branch—including temporary commissions, task forces, advisory boards, or special purpose entities—that do not prepare audited financial statements. This information would assist congressional efforts to review implementation of the ATDA and to improve the financial management of Federal entities within the Executive Branch.

⁴Agencies receiving a waiver or exemption included: Broadcasting Board of Governors, Central Intelligence Agency, Commission of Fine Arts, Court Services and Offender Supervision Agency for the District of Columbia, Defense Nuclear Facilities Safety Board, Federal Labor Relations Authority, Federal Maritime Commission, Japan-U.S. Friendship Commission, National Archives and Records Administration, National Endowment for the Humanities, National Labor Relations Board, Office of Special Counsel, Peace Corps, Securities and Exchange Commission, Selective Service System, U.S. Commission on Civil Rights, U.S. Commission for the Preservation of America's Heritage Abroad, U.S. Commodity Futures Trading Commission, U.S. Consumer Product Safety Commission, and U.S. International Trade Commission. See Letter from OMB Director Joshua Bolten to the Senate Governmental Affairs Committee and the House Government Reform Committee dated October 23, 2003.

⁵According to a February 2003 report entitled "The Budgetary Treatment of Leases and Public/Private Ventures," the Congressional Budget Office defines a special purpose entity (SPE) as "a corporation, partnership, limited liability company, grantor trust, or other trust * * * that is created by public and private parties for a single specified purpose and whose activities are predetermined by the contracts and other arrangements between the parties involved." A memorandum prepared by the Congressional Research Service (CRS) states that, in some instances, Federal agencies may use SPEs to keep a transaction off-budget, which may mask government liability. See CRS memorandum of February 10, 2004, which was prepared at the request of the Governmental Affairs Subcommittee on Financial Management, the Budget, and International Security of which Senators Peter G. Fitzgerald and Daniel K. Akaka are Chairman and Ranking Member, respectively.

S. 2688 would require OMB to submit a comprehensive list of entities that do not prepare audited financial statements. S. 2688 specifically requests information regarding entities, such as special purpose entities, that currently are not considered by OMB in its implementation of the ATDA. S. 2688 would also require OPM to provide additional information, such as budget and cost information for small Executive Branch entities, and would direct OMB to assess ways to improve financial reporting by these entities. This information is important to ensure that Federal funds are subject to the oversight provided by Federal financial management statutes.

III. LEGISLATIVE HISTORY

S. 2688, the Executive Branch Financial Accountability Reporting Act of 2004, was introduced by Senators Fitzgerald and Akaka on July 19, 2004, and was referred to the Committee on Governmental Affairs.

On July 21, 2004, the Committee met to consider pending legislation, including S. 2688. At that time, the Committee ordered the bill reported by voice vote without amendment. The following Senators were present: Collins, Voinovich, Specter, Fitzgerald, Lieberman, Akaka, Durbin, Carper, and Lautenberg.

IV. SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section provides that the Act may be cited as the “Executive Branch Financial Accountability Reporting Act of 2004.”

Section 2—Definition

This section defines the term “Federal entity” as any entity that is established in the Executive Branch, and includes any entity that administers a special purpose program or any other entity that is established by presidential or departmental directive.

Section 3—Report of Federal entities without annually audited financial statements

Subsection (a) requires the Director of the Office of Management and Budget within 60 days after the date of enactment of the Act to submit a report to the Senate Committee on Governmental Affairs and the House Committee on Government Reform.

Paragraph (1) of subsection (b) requires the report in subsection (a) to include a list of each Federal entity that receives an exemption from the requirement for an annually audited financial statement under the Accountability of Tax Dollars Act. This list would include the entity’s budget authority and outlays for the previous and current fiscal years, as well as the projected budget authority for the upcoming year.

Paragraph (2) requires the report to list any other Federal entities, including temporary commissions, advisory boards, task forces, or special purpose entities, that do not prepare annual financial statements and have them independently audited. This provision also requires the list to include the budget authority and outlays of these entities for the previous and current fiscal years, and the projected budget authority for the upcoming fiscal year.

Paragraph (3) states that the report shall include an assessment of the capability of the entities listed under paragraphs (1) and (2) to prepare annual financial statements and have them independently audited, as well as the costs that would be incurred to do so.

Paragraph (4) requires the report to assess how the costs of preparing the financial statements and performing independent audits of those statements for the entities listed under paragraphs (1) and (2) may be reduced by grouping smaller entities together for the purpose of preparing and auditing the entities' financial statements. This paragraph also requires an assessment of other means by which the preparation and audit of financial statements could be made cost-effective for the entities listed.

Paragraph (5) requires the report to provide an assessment of the benefits of improved financial oversight of the entire Executive Branch, including the entities listed under paragraphs (1) and (2). This paragraph also requires the report to include recommendations for a plan to implement a requirement that the entire Executive Branch have annual financial statement audits.

Section 4—Authorization of appropriations

This section authorizes such sums as may be necessary to carry out the Act.

V. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the "regulatory impact which would be incurred in carrying out this bill." The enactment of S. 2688 would have no regulatory impact.

VI. CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 4, 2004.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for S. 2688, the Executive Branch Financial Accountability Reporting Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2688—Executive Branch Financial Accountability Reporting Act of 2004

S. 2688 would direct the Office of Management and Budget (OMB) to prepare a report on all executive branch entities and activities that are exempt from the requirement to undergo an annual financial audit. Such entities would include many federal commissions, task forces, advisory boards, and other special groups.

The report on those entities would include budget information and an assessment of cost to prepare independent audits for these entities. The bill would require OMB to submit the report to the Congress within 60 days of enactment.

The cost to conduct such a study could vary depending on the level of detail included and the comprehensiveness of the analysis. Based on information from OMB, and the cost to prepare similar reports with short deadlines, CBO estimates that preparing and distributing this report would cost less than \$500,000 in fiscal year 2005, assuming the availability of appropriated funds. This estimate excludes any additional costs to prepare audits for entities that are currently exempt from auditing requirement. Subsequent legislation would be needed to authorize such audits. Enacting S. 2688 would not affect direct spending or revenues.

S. 2688 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

VII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, there are no changes in existing law made by S. 2688 as reported.